

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

**SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947**

August 31, 2010

Kenneth L. West
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

**RE: State v. West
Defendant ID No. 0905016864
Motion for Postconviction Relief**

Dear Mr. West:

On June 22, 2010, you filed a timely Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The allegations center around claims of ineffective assistance of counsel. Pursuant to Rule 61(g), affidavits were requested of your attorney and you. Your attorney's affidavit was filed on July 22, 2010. Your affidavit was received on August 23, 2010. After studying the Motion, the affidavits, and the transcript of the trial that turned into a guilty plea, I have determined your Motion must be denied.

BACKGROUND

You were charged with seven sexual offenses against a minor alleged to have taken place on May 15, 2009. The charges consisted of three (3) counts of unlawful sexual conduct against a minor, three (3) counts of unlawful sexual conduct in the second degree, and one (1) count of indecent exposure.

Upon arrest, you gave a statement which was taped. You made admissions as to the charges .

Trial was set for November 10, 2009. Final case review took place on November 4, 2009. It was requested that it be rescheduled to further evaluate the plea so another Final Case Review took place on November 6, 2009. There was no resolution of the case on November 6, 2009.

On November 10, 2009, a jury was selected. Following opening statements, the defense renewed plea discussions with the State, but ultimately decided to continue with the trial.

In the middle of the complaining witness's testimony, you requested an opportunity to resolve the case with a guilty plea.

The offer was a guilty plea to all charges with an habitual offender sentence on one felony which would trigger a sentencing range of five (5) years to life. There was no specific sentencing recommendation in the plea agreement. You accepted the plea and pled guilty. A presentence investigation was ordered.

On January 22, 2010, you were sentenced to a total Level 5 time of ten (10) years followed by probation. There was no appeal.

RULE 61 ALLEGATIONS

While you allege three (3) separate grounds, they all boil down to your claim that your attorney was ineffective for not pursuing a mental illness defense or raising your competency to stand trial.

_____ It is your burden to establish that your attorney (i) made professional mistakes or errors of omission; and (ii) that your attorney's mistakes, errors, and/or omissions actually prejudiced you by impacting the verdict. *Strickland v. Washington*, 466 U. S. 668 (1984). You must make concrete allegations as to the errors and/or omissions and prejudice. Conclusory allegations are subject to dismissal. *Younger v. State*, 580 A.2d 552 (Del. 1990).

Before going to the merits of your claims, it is noteworthy to review the plea colloquy.

The decision to interrupt the trial and accept a plea offer was made by you.

Based upon your previous vacillation, the Court spent an enormous amount of time reviewing with you all aspects and consequences of a guilty plea. Your trial and appeal rights were reviewed twice.

You reported to me you were satisfied with your attorney and had no complaints. You also answered "yes" to this question on the guilty plea form.

Per the guilty plea form and the plea colloquy, the Court was aware of your mental health history and that you were taking mental health medications at the time of the plea. You took only what was prescribed and at the times prescribed. Based upon the plea colloquy and this Court's recollection of the plea, I am satisfied that you were alert, responsive and competent.¹

The Court specifically advised you that if you had any issues or problems with your attorney or his office that got in the way of your decision to plead guilty, you had to raise it with me or forget about it forever, i.e., speak now or forever hold your peace. You told me there were no problems.

In his Rule 61(g) affidavit, your attorney reported that he had discussions with you as to your mental health and that you told him an evaluation might prove you "may be incompetent".

Therefore, your attorney requested you be interviewed by a staff Psycho-Forensic Evaluator. It was determined that there were no competency issues. Subsequently, another Psycho-Forensic Evaluation worked with you. None of the Office of the Public Defender's staff, nor your attorney ever thought you were incompetent.

Your attorney also noted that while you may have mental health issues, it was never believed a mental illness defense was viable, especially in light of voluntary intoxication on the day of the alleged crimes.

In summary, defense counsel considered and investigated the issues of competency and a mental illness defense, but had no reason or basis to pursue that line of defense.

Your affidavit argues that your attorney should have dug deeper and conducted a more thorough investigation.

CONCLUSION

Based upon the plea colloquy and the affidavit of trial counsel, I am satisfied that trial counsel fulfilled his 6th Amendment obligations to his client. He conducted a reasonable inquiry into a potential mental health defense and into the competency of his client. This was done not because of his observations, but at the request of his client.

Trial counsel committed no error or omission.

¹Recollections as to events occurring this far in the past are rare, but your case was noteworthy because the plea occurred in the middle of the trial and with the history noted above, the Court remarked as to the probability you would be writing to change your mind again.

Finally, you have established no prejudice. You have not established or shown the Court what any further digging by your attorney would have established.

Your Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

THG:baj

cc: Prothonotary
Casey Ewart, Esquire
Office of the Public Defender